

Docket No.: 071194-0011

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

J. Howard Smith, et al.

Serial No.: 09/780,979

Filed: February 9, 2001

For: DATA COMMUNICATION
CONTROLLER AND METHOD

Examiner: Chirag Shah

Group Art Unit: 2664

Commissioner for Patents
P.O. Box 1450
Washington, DC 20231**REVOCATION OF POWER OF ATTORNEY, APPOINTMENT
AND CERTIFICATION UNDER 37 CFR 3.73(b)**

Sir:

The undersigned assignee of the above-identified application hereby revokes all previous Powers of Attorney and appoints the following attorneys with full power to prosecute the application, to make alterations and amendments therein, and to transact all business in the United States Patent Office connected therewith.

I hereby appoint the practitioners associated with the firm and Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

McDERMOTT WILL & EMERY LLP
Customer Number: 31824

Serial No.: 09/780,979

All future correspondence and telephone inquiries should be directed to:

Mark J. Itri
McDERMOTT WILL & EMERY LLP
18191 Von Karman Ave., Suite 400
Irvine, CA 92612-0187
Telephone: (949) 851-0633
Facsimile: (949) 851-9348

CERTIFICATE UNDER 37 CFR 3.73(b)

LANTRONIX, INC., a corporation of Delaware, certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of:

- (1) An Assignment from the inventors of the patent application identified above to SYNERGETIC MICRO SYSTEMS, INC., which was recorded in the U.S. Patent and Trademark Office at Reel 011818, Frame 0283; and
- (2) A merger of SYNERGETIC MICRO SYSTEMS, INC. into LANTRONIX, INC., after which the entire right, title and interest in the patent application identified above vested in LANTRONIX, INC. A copy of the relevant portions of the merger documentation is enclosed herewith.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

The undersigned further declares that all statements made herein of its own knowledge are true and that all statements made on information and belief are believed to be true; and further that

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these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

LANTRONIX, INC.

Name: Michael S. Oswald
Title: VP, Gen. Counsel & Secretary

Signature: M. Oswald

Date: 16 June 2004

ORC 339598-1.071194.0011

AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

LANTRONIX, INC.

S COMPANY ACQUISITION CORPORATION

SYNERGETIC MICRO SYSTEMS, INCORPORATED

THE PRINCIPAL SHAREHOLDERS

AND

MICHAEL B. JUSTICE

AS SHAREHOLDER REPRESENTATIVE

Dated as of September 19, 2001

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made and entered into as of September 19, 2001, by and among Lantronix, Inc., a Delaware corporation ("Parent"), S Company Acquisition Corporation, an Illinois corporation and a wholly owned subsidiary of Parent ("Sub"), Synergetic Micro Systems, Incorporated, an Illinois corporation (the "Company"), Michael B. Justice, J. Howard Smith and Richard J. Goldstein (each, a "Principal Shareholder," and collectively, the "Principal Shareholders"), and with respect only to Article VII and Article IX hereof, Michael Justice in the capacity of the Shareholder Representative (the "Shareholder Representative").

RECITALS

A. The Boards of Directors of each of Parent, Sub and the Company believe it is in the best interests of each company and its respective security holders that Parent acquire the Company through the statutory merger of Sub with and into the Company (the "Merger") and, in furtherance thereof, have approved the Merger.

F. The parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"). The parties intend for the Merger to be accounted for as a purchase.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

ARTICLE ITHE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 1.2 hereof) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the Illinois Corporation Act of 1983 ("Illinois Law"), Sub shall be merged with and into the Company, the separate corporate existence of Sub shall cease, and the Company shall continue as the surviving corporation and as a wholly owned subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to hereinafter as the "Surviving Corporation".

1.2 Effective Time. Unless this Agreement is earlier terminated pursuant to Section 8.1 hereof, the closing of the Merger (the "Closing") will take place as promptly as practicable after the execution and delivery hereof by the parties hereto, but no later than five (5) business days following satisfaction or waiver of the conditions set forth in Article VI hereof, at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, at 10 a.m. Palo Alto time, unless another time and/or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the "Closing Date." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger with the articles of merger attached thereto with the Secretary of State of the State of Illinois (the "Certificate of Merger"), in accordance with the applicable provisions of Illinois Law (the time of acceptance by the Secretary of State of the State of Illinois of such filing shall be referred to herein as the "Effective Time").

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Illinois Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all the property, rights, privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Articles of Incorporation and Bylaws

(a) Unless otherwise determined by Parent prior to the Effective Time, the articles of incorporation of the Surviving Corporation shall be identical to the articles of incorporation of Sub as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Illinois Law and as provided in such articles of incorporation.

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Illinois Law and as provided in the articles of incorporation of the Surviving Corporation and such bylaws; *provided, however,* that the provisions of the articles of incorporation and bylaws of Sub concerning liabilities and indemnification of officers, directors and employees shall be no less favorable to officers, directors and employees than provisions regarding such matters in the Parent's bylaws.

2.13 Intellectual Property.

(a) Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"Intellectual Property" shall mean any or all of the following (i) works of authorship including, without limitation, computer programs, source code, and executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, records, data and mask works, (ii) inventions (whether or not patentable), improvements, and technology, (iii) proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections and technical data, (v) logos, trade names, trade dress, trademarks and service marks, (vi) domain names, web addresses and sites, (vii) tools, methods and processes, and (viii) any and all instantiations of the foregoing in any form and embodied in any media.

"Intellectual Property Rights" shall mean worldwide common law and statutory rights associated with (i) patents and patent applications, (ii) copyrights, copyright registrations and copyright applications, "moral" rights and mask work rights, (iii) the protection of trade and industrial secrets and confidential information, (iv) other proprietary rights relating to intangible intellectual property, (v) trademarks, trade names and service marks, (vi) analogous rights

to those set forth above, and (vii) divisions, continuations, renewals, reissuances and extensions of the foregoing (as applicable).

"Company Intellectual Property" shall mean any Intellectual Property and Intellectual Property Rights that are owned by or licensed to the Company and necessary to the conduct of the business of the Company as it is currently conducted, and all such Company Intellectual Property are identified in Section 2.13 of the Disclosure Schedule.

"Registered Intellectual Property" shall mean Intellectual Property and Intellectual Property Rights that have been registered, filed (including applications), certified or otherwise perfected or recorded with any state, government or other public legal authority.

(b) Section 2.13 of the Disclosure Schedule (i) lists all Registered Intellectual Property owned by, or filed in the name of, the Company (the "Company Registered Intellectual Property") and (ii) lists any proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property.

(c) Except as provided in Section 2.13 of the Disclosure Schedule, each item of Company Intellectual Property, including all Company Registered Intellectual Property listed in Section 2.13 of the Disclosure Schedule, and all Intellectual Property licensed to the Company, is free and clear of any Lien or other encumbrances. The Company is the exclusive owner or exclusive licensee of all Company Intellectual Property that is expressly identified as "Exclusive" on Section 2.13 of the Disclosure Schedule (the "Exclusive Intellectual Property"). Other as identified on Section 2.13 of the Disclosure Schedule, Parent will not be required to make any payments to third-parties to use any Intellectual Property used in the conduct of the business of the Company as it is currently conducted, and the Company is not currently making any such payments.

(d) With respect to such of the Exclusive Intellectual Property that has been developed or created independently, or jointly by any person other than the Company for which the Company has, directly or indirectly, paid, the Company has a written agreement with such person or entity with respect thereto and the Company thereby has obtained ownership of, or has obtained an exclusive, perpetual, transferable, non-terminable license (sufficient for the conduct of its Business as currently conducted) under, all Intellectual Property therein and associated Intellectual Property Rights by agreement, operation of law, or by valid assignment.

(e) Except as provided in Section 2.13 of the Disclosure Schedule, the Company has not transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Intellectual Property or Intellectual Property Rights that is or was Company Intellectual Property, to any other person.

(f) Other than "shrink-wrap," "stacks," and "drivers" and similar widely available binary code and commercial end-user licenses, but not including public or open technology, the Company Intellectual Property constitutes all the Intellectual Property and Intellectual Property

IN WITNESS WHEREOF, Parent, Sub, the Company, the Principal Shareholders and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

LANTRONIX INC

By: _____
Name: _____
Title: CFO

**SYNERGETIC MICRO SYSTEMS,
INCORPORATED**

By: _____
Name: _____
Title: _____

S COMPANY ACQUISITION CORPORATION

By: _____
Name: _____
Title: CFO

SHAREHOLDER REPRESENTATIVE

By: _____
Michael Justice, an individual

PRINCIPAL SHAREHOLDERS

By: _____
Michael B. Justice, an individual

By: _____
J. Howard Smith, an individual

By: _____
Richard J. Goldstein, an individual

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IN WITNESS WHEREOP, Parent, Sub, the Company, the Principal Shareholders and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

LANTRONIX, INC.By: _____
Name: _____
Title: _____**SYNERGETIC MICRO SYSTEMS,
INCORPORATED**By: _____
Name: _____
Title: _____**S COMPANY ACQUISITION CORPORATION**By: _____
Name: _____
Title: _____**SHAREHOLDER REPRESENTATIVE**

By: Michael B. Justice, an individual

PRINCIPAL SHAREHOLDERS

By: Michael B. Justice, an individual

By: J. Howard Smith, an individual

By: Richard J. Goldstein, an individual

** TOTAL PAGE 30 **

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IN WITNESS WHEREOF, Percon, Sub, the Company, the Principal Shareholders and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

LANTRONIX, INC.By: _____
Name:
Title:**SYNERGETIC MICRO SYSTEMS,
INCORPORATED**By: _____
Name:
Title:**S COMPANY ACQUISITION CORPORATION**By: _____
Name:
Title:**SHAREHOLDER REPRESENTATIVE**By: Michael B. Justice, an individual**PRINCIPAL SHAREHOLDERS**By: Michael B. Justice, an individualBy: J. Howard Smith
J. Howard Smith, an individualBy: Richard J. Goldstein, an individual

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IN WITNESS WHEREOF, Parent, Sub, the Company, the Principal Shareholders and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

- LANTRONIX, INC.

By: _____
Name: _____
Title: _____

SYNERGETIC MICRO SYSTEMS,
INCORPORATED

By: 
Name: M B Justice
Title: PRESIDENT

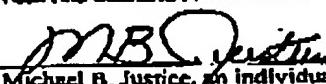
S COMPANY ACQUISITION CORPORATION

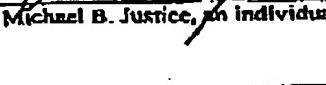
By: _____
Name: _____
Title: _____

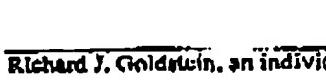
SHAREHOLDER REPRESENTATIVE

By: 
Name: Michael B. Justice, an individual

PRINCIPAL SHAREHOLDERS

By: 
Name: Michael B. Justice, an individual

By: 
Name: J. Howard Smith, an individual

By: 
Name: Richard J. Goldstein, an individual

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**Disclosure Schedule
Section 2.1J
Intellectual Property of Company**

Company Registered Intellectual Property

- Patent Application: Data Communication Controller and Method, Patent Serial No. 09/780,979, dated February 9, 2001

"Synergetic" - Registered Trademark

"FactoryComm" - Trademark Registration applied for, allowed and passed for publication in the Official Gazette

Exclusive Intellectual Property – Owned or Licensed

1. Registered Intellectual Property (see above)
2. The Company's logo artwork for:
 - a. Synergetic,
 - b. EmbeddedComm,
 - c. FactoryComm, and
 - d. Industrial EtherNet Association
3. EC-1 Product elements
 - a. ASIC manufacturing rights to the specific design netlist test vectors and programs developed under work for hire by V Automation
 - b. Evaluation board design files, PCB Artwork, Documentation sets
 - c. Dual Port Memory Interface board design files, PCB Artwork, Documentation
 - d. EC-1 Hardware Reference Manual and EC-1 Data Sheet
 - e. Software design documentation and source code
 - f. Prototype test and evaluation software

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